

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PHYLLIS DRUMMOND,

Petitioner,

V.

Civ. Act. No. 07-58-***

PATRICK RYAN, Warden,
and **JOSEPH R. BIDEN, III**, Attorney
General of the State of Delaware,

Respondents.

MOTION FOR EXTENSION OF TIME

Pursuant to Rule 6 of the Federal Rules of Civil Procedure, respondents move for an extension of time in which to file an answer to the petition. In support thereof, respondents state the following:

1. The petitioner, Phyllis Drummond, has applied for federal habeas relief, filing a habeas petition challenging her 2004 conviction and sentence for first degree robbery and wearing a disguise during the commission of a felony. D.I. 1. By the terms of the Court's order, the answer is due to be filed on May 7, 2007. D.I. 9.

2. Counsel has been, and continues to be, diligently working on numerous cases before this Court and the state courts. However, the workload for the Appeals Division attorneys is currently very substantial. Counsel is currently assigned to four first degree murder cases in various stages of postconviction litigation. In addition to her substantial regular caseload, counsel is also involved in scheduling numerous depositions for the federal class action litigation regarding the lethal injection procedures in Delaware. In light of the situation, additional time is needed to complete the answer and have it reviewed in the ordinary course of business.

3. Under Habeas Rule 4, the Court has the discretion to give respondents an extension of time exceeding the 40-day limit in Civil Rule 81(a)(2). *Clutchette v. Rushen*, 770 F.2d 1469, 1473-74 & n.4 (9th Cir. 1985); *Kramer v. Jenkins*, 108 F.R.D. 429, 431-32 (N.D. Ill. 1985). The comment to Rule 4 expressly states that the district court has "the discretion to take into account various factors such as the respondent's workload" in determining the period of time that should be allowed to answer the petition.

4. This is respondents' first request for an extension of time in this case.

5. Respondents submit that an extension of time to and including June 22, 2007, in which to file an answer is reasonable. Respondents submit herewith a proposed order.

/s/ Elizabeth R. McFarlan
Deputy Attorney General
Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 577-8500
Del. Bar. ID No. 3759

DATE: May 4, 2007

RULE 7.1.1 CERTIFICATION

I hereby certify that I have neither sought nor obtained the consent of the petitioner, who is in the custody of the Delaware Department of Correction and appearing *pro se*, to the subject matter of this motion.

/s/ Elizabeth R. McFarlan
Deputy Attorney General

Counsel for Respondents

Date: May 4, 2007

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PATRICK RYAN, Warden,
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General of the State of Delaware,

Respondents.

ORDER

This _____ day of _____, 2007,

WHEREAS, respondents having requested an extension of time in which to file an answer,

and

WHEREAS, it appearing to the Court that the requested extension is timely made and good cause has been shown for the extension,

IT IS HEREBY ORDERED that respondents' answer shall be filed on or before June 22, 2007.

United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on May 4, 2007, I electronically filed a motion for extension of time with the Clerk of Court using CM/ECF. I also hereby certify that on May 4, 2007, I have mailed by United States Postal Service, the same document to the following non-registered participant:

Phyllis Drummond.
SBI No. 241930
Women's Correctional Institute
660 Baylor Blvd.
New Castle, DE 19720

/s/ Elizabeth R. McFarlan
Deputy Attorney General
Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 577-8500
Del. Bar. ID No. 3759
elizabeth.mcfarlan@state.de.us